

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

LAMONT GOUGH,

Plaintiff,

v.

9:16-CV-1107
(GTS/DJS)

SERGEANT MORRIS, Coxsackie Corr. Fac.;
SERGEANT DAVIDSON, Coxsackie Corr. Fac.;
JOHN DOE #1, Officer, Coxsackie Corr. Fac.;
JOHN DOE #2, Officer, Coxsackie Corr. Fac.; and
JOHN DOE #3, Officer, Coxsackie Corr. Fac.,

Defendants.

APPEARANCES:

OF COUNSEL:

LAMONT GOUGH
Plaintiff, *Pro Se*
Coxsackie Correctional Facility
P.O. Box 999
Coxsackie, New York 12051

HON. LETITIA JAMES
Attorney General for the State of New York
Counsel for Defendants
The Capitol
Albany, New York 12224

WILLIAM A. SCOTT, ESQ.
Assistant Attorney General

GLENN T. SUDDABY, Chief United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* prisoner civil rights action filed by Lamont Gough (“Plaintiff”) against the five above-captioned employees of the New York State Department of Corrections and Community Supervision (“Defendants”) pursuant to 42 U.S.C. § 1983, is the Report-Recommendation of United States Magistrate Judge Daniel J. Stewart recommending that Defendants Morris and Davidson’s motion for summary judgment be

granted, that the Court dismiss Plaintiff's claims against those two Defendants for failure to exhaust his available administrative remedies, and that the Court *sua sponte* dismiss Plaintiff's remaining claims against the three John Doe Defendants for (1) failure to comply with a Court Order and/or to prosecute this action under Fed. R. Civ. P. 41(b) and N.D.N.Y. L.R. 41.2(a), (2) failure to serve under Fed. R. Civ. P. 4(m), and/or (3) failure to exhaust his available administrative remedies. (Dkt. No. 53.) None of the parties have filed objections to the Report-Recommendation, and the deadline in which to do so has expired. (*See generally* Docket Sheet.) After carefully reviewing the relevant papers herein, including Magistrate Judge Stewart's thorough Report-Recommendation, the Court can find no clear-error in the Report-Recommendation:¹ Magistrate Judge Stewart employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety: Defendants Morris and Davidson's motion for summary judgment is granted; Plaintiff's claims against those two Defendants are dismissed for failure to exhaust his available administrative remedies; and Plaintiff's remaining claims against the three John Doe Defendants are *sua sponte* dismissed for (1) failure comply with a Court Order and/or to prosecute this action, (2) failure to serve and/or (3) failure to exhaust his available administrative remedies.

¹ When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a clear error review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a "clear error" review, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Id.*; *see also Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) ("I am permitted to adopt those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.") (internal quotation marks omitted).

ACCORDINGLY, it is

ORDERED that Magistrate Judge Stewart's Report-Recommendation (Dkt. No. 53) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

ORDERED that Defendants Morris and Davidson's motion for summary judgment (Dkt. No. 47) is **GRANTED**; and it is further

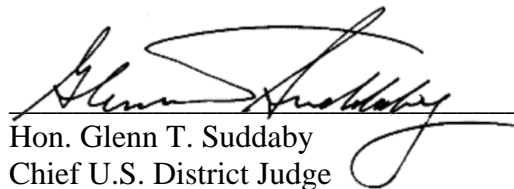
ORDERED that Plaintiff's claims against Defendants Morris and Davidson are **DISMISSED** for failure to exhaust his available administrative remedies; and it is further

ORDERED that Plaintiff's remaining claims against the three John Doe Defendants are *sua sponte* **DISMISSED** for (1) failure to comply with a Court Order and/or to prosecute this action under Fed. R. Civ. P. 41(b) and N.D.N.Y. L.R. 41.2(a), (2) failure to serve under Fed. R. Civ. P. 4(m), and/or (3) failure to exhaust his available administrative remedies; and it is further

ORDERED that the Clerk of the Court shall enter Judgment for Defendants and close this action.

The Court certifies that an appeal from this Decision and Order would not be taken in good faith.

Dated: January 31, 2019
Syracuse, New York


Hon. Glenn T. Suddaby
Chief U.S. District Judge